

Court File No.: CV-21-00657656-00CCL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

THE TORONTO DOMINION BANK

Applicant

- and -

BRAD DUBY PROFESSIONAL CORPORATION

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND
INSOLVENCY ACT, R.S.C. 1985, C. B-3, AS AMENDED, AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990 C. C.43, AS AMENDED

MOTION RECORD OF NEW COUNSEL McLEISH ORLANDO LLP

October 3, 2022

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New Counsel

INDEX

Court File No.: CV-21-00657656-00CCL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

THE TORONTO DOMINION BANK

Applicant

- and -

BRAD DUBY PROFESSIONAL CORPORATION

Respondent

I N D E X

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Exhibit "A" Motor Vehicle Collision Report dated June 19, 2020	A
Exhibit "B" Signed Duby Accident Benefits Retainer Agreement dated July 24, 2020	B
Exhibit "C" Signed Duby Tort Retainer Agreement dated July 24, 2020	C
Exhibit "D" Statement of Claim issued on June 18, 2021	D

TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

THE TORONTO DOMINION BANK

Applicant

- and -

BRAD DUBY PROFESSIONAL CORPORATION

Respondent

RESPONDING AFFIDAVIT OF AIDAN VINING

I, Aidan Vining of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a member of the firm of McLeish Orlando LLP, lawyers for Anne Marie Al-Borno, a former client of the Respondent, Brad Duby Professional Corporation, and as such have knowledge of the matters to which I hereinafter depose. Where the facts set out in my Affidavit are based on information provided to me by others, I have set out the source of the information in this Affidavit and I believe those facts to be true.

2. I have reviewed the responding motion record and factum prepared by Ms. Savannah Chorney, and I am in agreement with the relief she seeks in relation to opposing the implementation of the "sliding fee schedule".

THE NATURE OF ANNE MARIE AL-BORNO'S RETAINER AGREEMENTS

3. Anne Marie Al-Borno was involved in a motor vehicle collision on June 19, 2020. Now shown to me and attached as **Exhibit "A"** to this my Affidavit is a true copy of the Motor Vehicle Collision Report dated June 19, 2020.

4. As a result of the collision, on July 24, 2020, Ms. Al-Borno retained the services of the deceased, Brad Duby.

5. Following Mr. Duby's death on January 28, 2021, Ms. Al-Borno retained my office on April 16, 2021.

6. The retainer that Mr. Duby and Ms. Al-Borno signed for the purposes of her accident benefit claim indicated that should Ms. Al-Borno retain new counsel, her new counsel would pay disbursements in full and honour the fee account for work performed to the time of termination of the retainer, at the hourly rates set out in Tariff A for solicitors' fees under Rule 58.05 of the *Rules of Civil Procedure*. Now shown to me and attached as **Exhibit "B"** to this my Affidavit is a true copy of the accident benefit retainer agreement that Ms. Al-Borno signed with Mr. Duby dated Agreement dated July 24, 2020.

7. The retainer that Mr. Duby and Ms. Al-Borno signed for the purposes of her tort claim, provided that if Ms. Al-Borno chose to terminate the agreement, she agreed to pay the disbursements and reasonable charges for the work accomplished to the date the retainer was terminated. The reasonable charges were stated to include, among other factors, the time and effort expended, and the usual hourly rates of the firm as set out in the retainer agreement. Now shown to me and attached as **Exhibit "C"** to this my Affidavit is a true copy of the tort retainer agreement that Ms. Alborn signed with Mr. Duby dated July 24, 2020.

THE INAPPROPRIATENESS OF THE SLIDING FEE SCALE

8. Mr. Duby completed a very limited amount of work on Ms. Al-Borno's file. For instance, Mr. Duby did not issue a Statement of Claim on behalf of Ms. Al-Borno. On June 18, 2021, my office issued the Statement of Claim on behalf of Ms. Al-Borno. Now shown to me and attached as **Exhibit "D"** to this my Affidavit is a true copy of the Statement of Claim issued on June 18, 2021.

9. The Respondent has not provided any information regarding the amount of time Mr. Duby spent working on Ms. Al-Borno's file. No transfer of account has been provided.

10. Given the limited amount of work completed by Mr. Duby on behalf of Ms. Al-Borno, I believe that the adoption of the proposed sliding fee structure, will result in a windfall to the Respondent.

11. I believe that the completion of an Assessment in accordance with the provisions of the *Solicitor's Act* is the best manner to determine the Respondent's fee interest. I do not believe that determining the Respondent's interest in this manner will cause prejudice to the Respondent.

RELIEF SOUGHT

12. An Order that The Respondent's interest in Anne Marie Al-Borno's file be determined by Assessment in accordance with the *Solicitors Act*.

13. I make this Affidavit in opposition to the relief sought in the motion record of The Receiver, MNP Ltd.

SWORN before me at the City of)
Toronto, in the Province of Ontario,)
this 4th day of October, 2022.)

)
)
)
)

A Commissioner etc.)

)
)
)
)

AIDAN VINING

Ekaterina Shmorgun, a Commissioner, etc.,
Province of Ontario, for McLelsh Orlando LLP,
Barristers and Solicitors.
Expires August 29, 2024

*This Exhibit "A" referred to in the
Affidavit of **Aidan Vining**,
sworn before me, this 4th day
of October, 2022.*



A COMMISSIONER FOR TAKING AFFIDAVITS

**Ekaterina Shmorgun, a Commissioner, etc.,
Province of Ontario, for McLeish Orlando LLP,
Barristers and Solicitors.
Expires August 29, 2024**

Motor Vehicle Collision Report

Ver 1

Ver 1

Use Template Ver. 1 With this report



Report Type: Original Amended Failed To Remain

Collision Number: PR200190374
 Page: 1 Of 2
 Collision Date: 2020/06/19
 Day of the Week: Fri
 Time: 18:28

0 1 41
 0 2 42
 0 3 43
 0 1 44

Self Reported

Time Officer Arrived or Police Service Reported to: 2020/06/19 18:35
 Emergency Equipment in Attendance: 01 - Fire Truck
 Service Performed: P104
 Prod. Ident. No. (P.I.N.): Dangerous Goods Involvement

Name of Investigating Officer: PENNER, PAUL
 Badge No.: 2473
 Div./Stat./Det.: 11C
 Plat/Squad: []

Name of Submitting Police Service: PRPS
 Distance: 0.0
 Unit: M
 Dir.: []

Location

R1 Trafficway: LORNE PARK ROAD
 M District: T O
 Keypoint/Geocode: []
 Offset: []

R2 Reference Point: QUEEN STREET WEST
 Municipality: MISSISSAUGA
 County, District, Reg. Municipality: PEEL

Driver 1

Driver (Last Name First): ALWAHAH, MAJID
 Code: []
 Address: 89 CALM WATERS CRES
 Telephone No.: []
 Brampton, ON, CA
 Postal Code: L6V4S2

Driver's Licence No.: A56825110691007
 Prov.: ON
 Class: G
 Cond: *N

Gender: M
 D.O.B (Y/M/D): 1969/10/07
 Proper Licence to Drive Class of Vehicle: Y
 Suspended Driver: N
 Breathalyzer Blood Test Admin.: N

Make: DODG
 Year: 2010
 Model: JOU
 Color: SIL
 Body Style: TY

Air Brake: Y
 Plate No.: BLRN677
 Prov.: ON
 Number of Occupants in Vehicle: 1

Owner (Last Name First): ALWAHAH, MAJID
 As above

Vehicle 1

Address: 89 CALM WATERS CRES
 Telephone No.: []
 Brampton, ON, CA
 Postal Code: L6V4S2

Insurance Company: THE PERSONAL
 None

Policy No.: K4673265
 Carrier Jurisdiction: []

CVOR No.: []
 Lic. Class: G
 Loaded Unloaded
 Approx. Speed: 40 Km/hr

Trailer 1

Make: []
 Year: []
 Model: []
 Color: []
 Body Style: []

Owner (Last Name First): []
 As vehicle above

Address: []
 Telephone No.: []

Postal Code: []

Insurance Company: []
 As vehicle above

Driver 2

Driver (Last Name First): AL-BORNO, ANNE, MARIE
 Code: []
 Address: 1151 CLOVERBRAE CRES
 Telephone No.: []
 Mississauga, ON, CA
 Postal Code: L5H2Z6

Driver's Licence No.: A51700506815122
 Prov.: ON
 Class: G
 Cond: XN

Gender: F
 D.O.B (Y/M/D): 1981/01/22
 Proper Licence to Drive Class of Vehicle: Y
 Suspended Driver: N
 Breathalyzer Blood Test Admin.: N

Make: VOLV
 Year: 2018
 Model: XC9
 Color: WHI
 Body Style: TY

Air Brake: Y
 Plate No.: BXYT202
 Prov.: ON
 Number of Occupants in Vehicle: 1

Owner (Last Name First): CANADIAN DEALER LEASE
 As above

Vehicle 2

Address: 2601-250 YONGE ST PO BOX 50
 Telephone No.: []
 Toronto, ON, CA
 Postal Code: M5B2L7

Insurance Company: SECURITY NATIONAL
 None

Policy No.: 73526564
 Carrier Jurisdiction: []

CVOR No.: []
 Lic. Class: G
 Loaded Unloaded
 Approx. Speed: 60 Km/hr

Trailer 2

Make: []
 Year: []
 Model: []
 Color: []
 Body Style: []

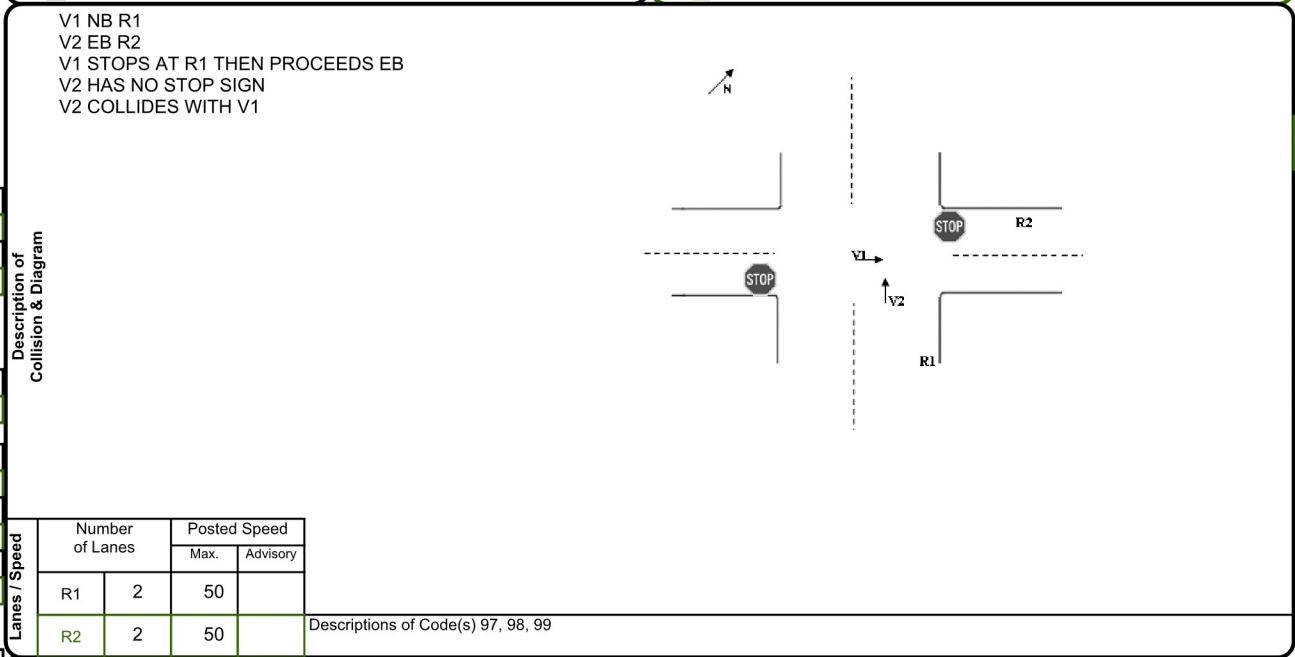
Owner (Last Name First): []
 As vehicle above

Address: []
 Telephone No.: []

Postal Code: []

Insurance Company: []
 As vehicle above

0 2 45
 0 1 46
 0 1 47
 0 1 48
 0 1 49
 0 1 50
 0 1 51
 0 1 52
 0 1 53
 0 1 54
 0 1 55
 0 1 56
 0 1 57
 0 1 58
 0 1 59
 0 5 60
 0 5 61



0 1 62
 1 3 64
 66
 67
 68

Describe Damage to Other Property: []
 Person and / or Agency Advised: []
 Y M D Time: []

No. Involved Persons - Injured Taken To / By: []
 Independent Witnesses - Name: []

Vehicle Taken To / By:
 V1: ROYAL WINDSOR/TRINITY
 V2: AFFORDABLE/AFFORDABLE

Persons Charged - Section and Act & P.O.T No.: []

Name of Coroner: []
 Telephone No.: []
 If School Age Child Involved Indicate School Name: []

Signature of Investigating Officer: []
 Report Completed on: 2020/06/19
 Signature of Supervisor: []
 Badge No.: 3009
 Y M D: 2020/07/27

Error Entry

Veh. No.	Ped. No.	Name	Address	Age	Sex	Class	Cond	Y	M	D	Time
1	1	ALWAHAH, MAJID	89 CALM WATERS CRES, Brampton, ON, CA, L6V4S2	50	M	01		03	01	01	
2	2	AL-BORNO, ANNE, MARIE	1151 CLOVERBRAE CRES, Mississauga, ON, CA, L5H2Z6	39	F	01	02	03	01	01	
69	70	71		72	73	74	75	76	77	78	



**Motor Vehicle
Collision Report**

Self Reported

Collision Number	PR200190374			Page	2 Of 2
Collision Date	Y	M	D	Day of the Week	Time
	2020/06/19			Fri	18:28

No.	Emergency Equipment (Service Performed)
2	02 - Ambulance

Veh. No.	Damage Estimate	Description of Damage to Vehicle or Additional Remarks for Investigator
1	5000	
2	7000	

Geographic Latitude	Geographic Longitude	Z Co-Ordinate
43.5317001	-79.6119482	

Personal information on this form is collected under the authority of s. 205 of the Ontario Highway Traffic Act and is used to maintain a record of motor vehicle accidents in Ontario. If you have any questions about the collection and use of your personal information collected on this form, please call the Supervisor, ServiceOntario at 416 235-2999 or 1 800 387-3445 or write to the Supervisor, Ministry of Transportation, Licensing Administration and Support Office, Main Floor, 87 Sir William Hearst Avenue, Toronto, Ontario, M3M 0B4. Direct general inquires to ServiceOntario at 416 235-2999 or 1 800 387-3445 or visit www.serviceontario.ca.

*This Exhibit "b" referred to in the
Affidavit of **Aidan Vining**,
sworn before me, this 4th day
of October, 2022.*



A COMMISSIONER FOR TAKING AFFIDAVITS

Ekaterina Shmorgun, a Commissioner, etc.,
Province of Ontario, for McLeish Orlando LLP,
Barristers and Solicitors.
Expires August 29, 2024

Contingency Fee Retainer Agreement: Accident Benefits Claims

Between:

BRAD DUBY PROFESSIONAL CORPORATION, o/a DUBY & ASSOCIATES
2 Clinton Place, Toronto, ON M6G 1J9
P: 416 588 9100 F: 416 588 9102

- and -

ANNE MARIE AL-BORNO
1151 Cloverbrae Crescent, Mississauga, ON L5H 2Z6
P: 416-668-1006

I have retained Duby & Associates to act on your behalf in securing benefits as are available to me under the Statutory Accident Benefits Schedule, as amended, arising from a motor vehicle accident on June 19, 2020.

By signing this retainer, I authorize Duby & Associates to take all steps in connection with the proceeding as Duby & Associates may consider necessary and proper, and to employ such agents and retain counsel as Duby & Associates considers advisable.

In consideration of acting on my behalf, I agree to pay you no more than **30% plus H.S.T.**, and all applicable disbursements, for any lump sum settlements awarded. I understand that I am responsible to pay you fees forthwith after the receipt of the lump sum settlements awarded.

I understand that should there be any disbursements reasonably required to prosecute my claim with the insurance company, I shall be responsible for payment of all disbursements in relation thereto and that you may require that I supply a monetary retainer to cover such expenses.

Notwithstanding the above, I understand that if you deem it advisable to proceed to a Case Conference and/or Hearing before the Licensing Appeals Tribunal ("LAT") for any aspect of my claim, I acknowledge that I agree to pay you **33% plus H.S.T.** and disbursements on any lump-sum settlements awarded, whether for a partial settlement or full and final settlement of my accident benefits claim.

If, for any reason, I retain new counsel, my new counsel will pay Duby & Associates disbursements in full, forthwith, and honour the fee account for work performed to the time of termination of the retainer. The hourly rates for fees are set out in Tariff A for solicitors' fees under Rule 58.05 of the *Rules of Civil Procedure*.

If you mislead Duby & Associates or misrepresent your claim, we reserve the right to ask for an interim payment of fees, and/or a retainer, and/or an increased retainer, or to withdraw our services. You hereby acknowledge that you are responsible for notifying Duby & Associates for a material change in your condition which may affect your claim.

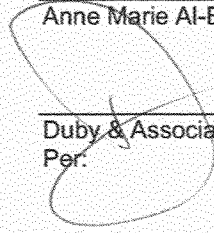


I hereby also acknowledge that you have advised me that I have a period of two (2) years from the date of the motor vehicle accident in which to commence an action in the Superior Court of Justice of Ontario for damages in tort.

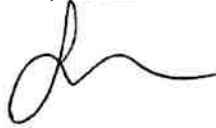
Dated: July 24, 2020

Signature: 
Anne Marie Al-Borno

Dated: July 24/20


Duby & Associates
Per:

*This Exhibit "C" referred to in the
Affidavit of **Aidan Vining**,
sworn before me, this 4th day
of October, 2022.*



A COMMISSIONER FOR TAKING AFFIDAVITS

**Ekaterina Shmorgun, a Commissioner, etc.,
Province of Ontario, for McLeish Orlando LLP,
Barristers and Solicitors.
Expires August 29, 2024**

CONTINGENCY FEE RETAINER AGREEMENT

Between:

BRAD DUBY PROFESSIONAL CORPORATION, o/a DUBY & ASSOCIATES

2 Clinton Place, Toronto, ON M6G 1J9
P: 416 588 9100 F: 416 588 9102

- and -

ANNE MARIE AL-BORNO

1151 Cloverbrae Crescent, Mississauga, ON L5H 2Z6
P: 416-668-1006

Hereafter referred to as the "Claimant" or "Claimants"

This agreement explains the services that we will provide to you, how you will be charged for them, and our responsibilities to each other. Please read this agreement carefully. If you have questions, please ask us before signing.

Contents

Legal Services.....	1
Expectations.....	2
Other Things You Need to Know	5
Ending the Relationship	5
Your Risks.....	6
Confidentiality and Privacy.....	7
Communications	7

Legal Services

This agreement confirms that you, (the "Claimant[s]") have retained Duby & Associates on a contingency fee basis to advance a potential Claim (the "Claim") for damages you have sustained as a result of a motor vehicle accident that occurred on June 19, 2020, due to the wrong doing of the defendant driver or any other person who may be liable (the "Defendant").

This agreement does not cover services for any other matter.

Who We Represent

In certain circumstances, family members or other individuals may be entitled to compensation in relation to the Claim. We represent only the Claimants who have signed this agreement.



Potential Conflicts

If you have asked us to act for more than one potential Claimant, this will be a joint retainer. In that case, we will share information between everyone we represent. Any information received from any of you will be shared with the rest.

In the case of a joint retainer, you have advised that there is no conflict of interest between you and that you have no objection to our firm representing all individuals signing this agreement. If a conflict does arise in the future you agree now, that in the event of any conflict arising we will continue to represent Anne Marie Al-Borno. We would then refer any conflicted individuals to an independent lawyer.

Expectations

What You Can Expect from Us

We will report to you on significant developments throughout. We will take appropriate steps to protect your interests and advance your Claim, which may include any of the following:

- (a) obtain and review relevant documentation;
- (b) conduct other investigations and/or research;
- (c) retain and instruct expert witnesses;
- (d) advise you if the Claim is likely viable;
- (e) make reasonable efforts to settle the case;
- (f) commence a lawsuit;
- (g) conduct examinations of any individual you sue;
- (h) prepare for and attend any court appearances, mediations, or pre-trial settlement conferences; and/or
- (i) prepare for and attend trial.

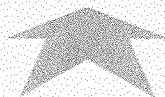
This agreement does not cover the services for an appeal. If after a trial, either side appeals, you would need to enter into a new agreement to cover the legal services associated the appeal.

What We Expect from You

We expect that you will reasonably cooperate and communicate with us. We can provide our best advice and guidance only when we have all relevant information. It is vital that you be candid and honest at all times. We must be able to reasonably make contact with you and receive a reply to our communications within 24 hours. In addition, we ensure you that any questions or concerns regarding your Claim will be answered within one business day.

What Your Claim is Worth

How much money you receive from the Claim is determined by a number of factors that are difficult to determine from the outset. These usually include, the extent of the injury, the final prognosis, and the economic consequences of the harm caused. Once we have the necessary information, we will give you our opinion of the dollar value of the Claim. Our opinion may change as the Claim develops.



How Long It Will Take

It can take up to several years for a claim to settle or go to trial. The amount of time the claim takes depends on factors such as: the age of the injured person; how soon they recover from their injuries; when we receive information about what the future holds for the injured person and court availability.

Settlement or Trial

We will try to settle your lawsuit to obtain a favourable settlement for you. If your Claim is settled, it would not have to go to trial. If we cannot settle the case, we will discuss with you the risks and potential benefits of a trial.

You Decide

We will give you our best advice and guidance; however, at all times you have the right to make the final choice regarding all major decisions, including settlement.

How Much Will It Cost

Legal costs are made up of two components: (1) legal fees and (2) out-of-pocket expenses, known as disbursements.

Legal Fees

You can choose to pay us for our work and expenses on an ongoing basis, based on time spent at fixed hourly rates. Alternatively, you can pay a percentage of the amount recovered, but only if you are successful in recovering compensation. This is known as a contingency fee. **You have chosen to retain us on a contingency fee basis.**

If you do not receive money for the Claim, you do not pay us for legal fees.

If you receive money for the Claim, you agree to pay us a fee of **33%** of the total amount recovered, plus disbursements and HST.

AMB Initials

If we successfully settle a lawsuit or we are successful at trial, we will seek a sum of money called "costs" from the Defendant. Any money received from the Defendant for costs are **not** included in the calculation of our fee, and serve to partially offset our charges.

When the Percentage Fee May Be Different

You may want to proceed to trial even though we recommend that you settle. In this case, if the trial judgment turns out to be less than the settlement that we recommended, our percentage fee will be based on the amount of the settlement that we recommended to you, not the amount of the trial judgment. We will notify you in writing if this situation occurs to avoid any confusion.



AMB Initials

Charges for legal services vary. You can speak with other lawyers to compare rates and payment arrangements. Duby & Associates shall **not** recover more in fees than you recover in damages or receive in a settlement.

Disbursements

Disbursements are the expenses we incur on your behalf, which may include: copying; postage; couriers; long distance; document binding; court and government filings; obtaining medical records; transcripts; court reporter services; investigators; expert consultants; demonstrative evidence; focus groups; witness attendance; travel; and research. You acknowledge that ~~Hanson Duby Lawyers~~ are entitled to be reimbursed for any of the disbursements expended on your behalf subject to s. 47 of the *Legal Aid Services Act, 1998* (applicable if you are in receipt of Legal Aid).

Hanson Duby & Assoc
AMB

As part of this Contingency Fee Retainer Agreement, we will initially pay all disbursements plus HST. If we are successful in recovering money for the Claim, we will be reimbursed for all legal expenses plus applicable taxes from any recovery. However, if we are not successful, we will not be reimbursed for these expenses.

We are entitled to be reimbursed for any legal expenses as a first charge on any money received for the Claim. This means that we have the legal right to be paid first from any such money.

Billing

We will provide you with an account in writing setting out the amounts recovered for your Claim, for legal costs, and expenses and showing the amounts charged to you under this agreement and the balance payable to you. You agree that any money from a settlement or judgment, including costs, will be paid directly to us to be held in trust by us subject to the terms of this Agreement. We will deduct our fee, legal expenses, and applicable taxes and provide you the balance.

Interest will accrue on the unpaid balance of any account(s) thirty days after the account has been mailed to you. The rate of interest will be noted on the account we send to you.

You have the right to ask the Superior Court of Justice to review and approve your lawyer's bill, within 30 days from the date you receive it. After that you must ask the Court for permission, providing an explanation for the delay.

Example

The following example is offered to help explain how you will be charged. It is not a prediction of your legal fees and expenses or what the Claim is worth.

This example assumes a settlement made up of the following amounts paid by the Defendant:

Damages including interest	\$ 100,000.00
Costs	15,000.00
Disbursements	2,500.00
HST (on \$33,000)	4,290.00
Total Paid by the Defendant	<u>\$ 121,790.00</u>



AMB Initials

We would charge thirty-three and one-third percent (33%) of the total damages. The account delivered to our client would be:

Fee (33% of \$100,000)	\$33,000.00
Disbursements paid by the Defendant	2,500.00
HST (on legal fees of \$33,000)	<u>4,290.00</u>
Total Fees and Disbursement Paid by You	\$ 39,790.00

In this example, the claimant would receive \$82,000.00 after deduction of our charges.

Other Things You Need to Know

Structured Settlement

A structured settlement allows you to receive tax-free payments over a period of time instead of a lump sum. There may be advantages to having all or part of a settlement structured or a legal requirement to accept payments over a period of time.

If periodic payments are part of any settlement or judgment, you will still be responsible for payment of our account at the time of settlement based on the total paid for the Claim including any amounts to fund periodic payments.

Persons Under a Legal Disability

Legal disability includes being under the age of 18, or mentally incapable.

If any person covered by this agreement is under a legal disability, this agreement and any legal charges must be approved by a judge, either before the agreement is finalized or as part of the approval of any settlement. Any money payable to such persons will be paid into court unless a judge orders otherwise.

Legal Cost and Disbursement Protection

You acknowledge that legal cost protection has been obtained on your behalf and for your benefit covering up to twenty-five thousand dollars (\$25,000) of legal cost protection and/or disbursements which may be owed by you following a trial of your claim(s). The cost of the protection is five hundred dollars (\$500) plus HST and will be paid out of your claim settlement proceeds or award. No fee shall be paid or owing in the event your claim is unsuccessful, abandoned, discontinued or transferred to new legal representation.

Ending the Relationship

You End the Relationship

You can end this agreement at any time. If you terminate this agreement before the Claim is concluded, you agree to pay the disbursements that were paid by our firm pertaining to your case as well as our reasonable charges for the work accomplished to that date as explained below.

If you do terminate this Agreement, you agree to sign a court form which tells the court that we no longer act for you.



We End the Relationship

There are circumstances where we may choose to end this agreement. For example, if we at any time determine that the Claim is unlikely to succeed or is no longer economically viable. In these circumstances, we may then enter into a new, non-contingency based fee agreement on terms to be negotiated at that time.

In the event that we terminate this Agreement and you ultimately received nothing for your Claim, we will not charge you legal fees. If we terminate the Agreement, and you do recovery money for your Claim, you agree to protect or pay our reasonable charges as explained below.

Reasonable Charges Explained

The factors that will determine our reasonable charges where this agreement ends prior to resolution of the Claim, include the time and effort required and spent by us; the usual hourly rates charged by us for non-contingency work; the complexity of the case and the responsibility and risk we assumed by representing you in the case; the difficulty and importance of your case; the expertise, experience, degree of skill and competency demonstrated by us in representing you; whether special skill or service was required and provided; the amount involved and/or value of the Claim; results obtained by us; and other relevant circumstances.

Our usual hourly rates, which generally increase annually, are:

Senior Lawyer	\$350.00
Junior Lawyer	\$240.00
Law Clerks	\$90.00
Articling Students	\$90.00
Summer Students	\$90.00

Protecting Our Account Explained

If you terminate this agreement and continue with the Claim, but are unable to pay our account at the time of termination, and we make arrangements to permit our reasonable charges to be paid upon the conclusion of the Claim, you agree that our reasonable charges will be a first charge on any money paid for the Claim. You also agree to sign a document at that time confirming this.

Your Risks

We will act in your best interests and give you our best legal advice. However, no lawyer can guarantee a successful outcome.

If a lawsuit is filed and the lawsuit or any significant pre-trial hearing is lost, the court may order you to pay a portion of the winning side's legal fees and disbursements/expenses. You are responsible for paying any such costs. Insurance may be available to protect you from some or all of a costs award that you may have to pay. We have discussed the availability of this insurance.

Understanding these risks, by signing this Agreement, you are expressly authorizing us to file a lawsuit on your behalf, if appropriate.



Confidentiality and Privacy

You authorize the collection and use of personal information in order to fully and properly represent you. From time to time some of your personal information may be disclosed to third parties only we determine is reasonably required to advance the Claim on your behalf.

Communications

We will contact you at:

Name: Anne Marie Al-Borno
Address: 1151 Cloverbrae Crescent
Mississauga, ON L5H 2Z6
Email: annemarie.alborno@gmail.com
Phone: 416-668-1006

You can contact us at:

Duby & Associates, 2 Clinton Place, Toronto, ON M6G 1J9
P: 416 588 9100 F: 416 588 9102 E: brad@dubyassociates.com

Email

By initialing this paragraph, you authorize the sending of confidential or private correspondence, documents and other information related to the Claim to you through the Internet (and, particularly, e-mail) in an unencrypted condition and without any guarantee of security or protection from interception by a third party.

AMB
Initials

CONFIRMATION

This Contingency Fee Retainer Agreement contains the complete agreement between us regarding your relationship with us, and our legal fees and expenses. It will not be changed unless we both agree and sign any changes. It will legally bind anyone, such as heirs or legal



AMB Initials

representatives, who replace either you or us but it does not legally bind other lawyers who might act for you if you decide to end our relationship.

You confirm that you understand that all usual protections and controls on retainers between a lawyer and client, as defined by the Law Society of Ontario and the common law, apply to this agreement.



BRAD DUBY,

Date: July 24/20

WITNESS



ANNE MARIE AL-BORNO

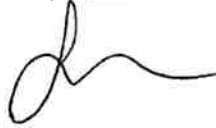
Date: July 24, 2020



WITNESS



*This Exhibit "D" referred to in the
Affidavit of **Aidan Vining**,
sworn before me, this 4th day
of October, 2022.*



A COMMISSIONER FOR TAKING AFFIDAVITS

**Ekaterina Shmorgun, a Commissioner, etc.,
Province of Ontario, for McLeish Orlando LLP,
Barristers and Solicitors.
Expires August 29, 2024**



Court File No.:

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Electronically issued : 18-Jun-2021
Délivré par voie électronique :
Brampton

ANNE MARIE AL-BORNO

Plaintiff

- and -

MAJID ALWAHAH

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

←

IF YOU PAY THE PLAINTIFF'S CLAIM, and an amount to be determined for costs, within the time for serving and filing your Statement of Defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date June 18, 2021

Issued by _____
Local Registrar

Address of Court Office:

Superior Court of Justice
7755 Hurontario Street
Brampton, Ontario
L6W 4T6

TO: **MAJID ALWAHAH**
89 Calm Waters Crescent
Brampton, Ontario
L6V 4S2

C L A I M

1. The Plaintiff claims against the Defendant for the following:
 - (a) Non-pecuniary damages in the sum of \$1,000,000.00.
 - (b) Pecuniary damages in the sum of \$5,000,000.00.
 - (c) Pre-judgment interest pursuant to section 128 of the *Courts of Justice Act*, R.S.O. 1990, Chapter C.43.
 - (d) Post-judgment interest pursuant to section 129 of the *Courts of Justice Act*, R.S.O., 1990, Chapter C.43.
 - (e) Her costs of this action and Harmonized Sales Tax on costs.
 - (f) Such further and other relief as this Honourable Court deems just.

THE PARTIES

2. The Plaintiff, Anne Marie Al-Borno, lives in the City of Mississauga, in the Regional Municipality of Peel, and at all material times was the operator of a 2018 Volvo motor vehicle bearing Ontario licence plate number BXYT 202 (the "Al-Borno vehicle").

3. The Defendant, Majid Alwahah, lives in the City of Brampton, in the Regional Municipality of Peel, and at all material times was the operator and owner of a 2010 Dodge motor vehicle bearing Ontario licence plate number BLRN 677 (the "Alwahah vehicle").

THE COLLISION

4. On Friday, June 19, 2020, at approximately 6:28 p.m., in the City of Mississauga, in the Regional Municipality of Peel, the Plaintiff was driving the Al-Borno vehicle westbound on Lorne Park Road towards its intersection with Queen Street West/Albertson Crescent. Albertson Crescent turns into Queen Street West just north of Lorne Park Road. At the same time, the Defendant, Majid Alwahah, was driving the Alwahah vehicle northbound on Albertson Crescent/Queen Street West towards the same intersection. The intersection is controlled by a stop sign for northbound and southbound traffic only. Suddenly and without warning, the Defendant, Majid Alwahah, failed to stop for the stop sign, drove into the intersection, and crashed into the Al-Borno vehicle. As a result of the collision, the Plaintiff suffered serious injuries.

ALLEGATIONS OF NEGLIGENCE

5. The Plaintiff states that the injuries suffered by her were caused solely by the negligence of the Defendant, the particulars of which are as follows:

- (a) He failed to bring the Alwahah vehicle to a stop immediately before entering Lorne Park Road and Queen Street West/Albertson Crescent.
- (b) He entered Lorne Park Road from Albertson Crescent without first ascertaining that he could do so in safety.
- (c) He failed to obey the stop sign at the said intersection.
- (d) He drove the Alwahah vehicle directly into the path of the Al-Borno vehicle.
- (e) He failed to keep a proper lookout.
- (f) He failed to have or maintain the Alwahah vehicle under proper control.

~

- (g) He was travelling at too high a rate of speed in the circumstances.
- (h) On the occasion in question, he was an incompetent driver, lacking in reasonable skill and self-command, and ought not to have attempted to operate a motor vehicle.
- (i) Even after the danger of a collision arose, he could, by the exercise of reasonable care, have avoided the same, but he failed to do so.
- (j) At the time, his faculties of observation, perception, judgment and self-control were impaired due to alcohol and drugs and due to his physical and mental condition, he was incompetent to operate a motor vehicle with normal and reasonable care and attention.
- (k) He created a situation of danger from which the Plaintiff, despite all reasonable efforts and precautions, was unable to extricate herself.
- (l) He failed to give any warning of the approach of the Alwahah vehicle, though such warning was reasonably necessary under the circumstances.
- (m) He failed to give the Al-Borno vehicle the right-of-way to which it was entitled.
- (n) He failed to have the Alwahah vehicle in a proper state of mechanical repair suitable for the safe use thereof on a highway.
- (o) He failed to have the brakes on the Alwahah vehicle in a proper working order or in the alternative, he failed to properly apply the same or at all.
- (p) He was texting, dialing, talking, or otherwise using a mobile or electronic device just before the collision and at the time of the collision.

v

- (q) In the five years before the collision, Majid Alwahah attended on his family doctor, other physicians, and an optometrist for various ailments and poor vision and was prescribed medication and corrective glasses for these ailments and poor vision and the various ailments themselves, and the medications, and the side effects to the medications, and the poor vision and failure to wear corrective glasses, impaired his ability to drive and his ability to maintain a driver's licence and notwithstanding his own knowledge of this, advice from various health professionals not to drive or to drive only under limited circumstances, he drove in any event.

INJURIES AND SYMPTOMS

6. As a result of the negligence of the Defendant, the Plaintiff sustained permanent serious disfigurement and permanent serious impairment of an important physical, mental and psychological function. The injuries suffered by the Plaintiff include:

- Injuries to her head and brain.
- Injuries to her neck, back and spine.
- Injuries to her lower extremities, including a lisfranc fracture of her right foot requiring open reduction and internal fixation surgical intervention.
- Various lacerations, abrasions and contusions.
- A spraining, straining and tearing of the muscles, tendons, ligaments, discs, nerves and vessels throughout her body.

7. The injuries were accompanied by headaches, dizziness, shock, anxiety, depression, emotional trauma, chronic pain, insomnia, weakness, diminished energy and stiffness which continue to the present and will continue in the future.

PAIN AND SUFFERING AND LOSS OF ENJOYMENT OF LIFE

8. The Plaintiff has sustained and will continue to sustain pain and suffering, a loss of enjoyment of life and a loss of amenities. The Plaintiff is unable to participate in those recreational, social, household, athletic, educational and employment activities to the extent to which she participated in such activities prior to the collision.

TREATMENT AND CARE

9. As a further result of the negligence of the Defendant, the Plaintiff has undergone and will continue to undergo in the future, hospitalization, surgery, therapy, rehabilitation, attendant care, the use of specialized equipment and other forms of medical treatment and health care. In addition, the Plaintiff has received and will continue to receive medication.

COST OF CARE

10. The Plaintiff has incurred and will continue to incur expenses, including expenses for hospitalization, surgery, medication, therapy, rehabilitation, attendant care, specialized equipment, medical treatment and other forms of care, the full particulars of which expenses are not within the Plaintiff's knowledge at this time.

LOSS OF HOUSEHOLD AND HOME MAINTENANCE CAPACITY

11. The Plaintiff is unable to perform household and home maintenance chores for herself to the extent that she was able to do so before the collision and resultant injuries. The Plaintiff has suffered a loss of housekeeping and home maintenance capacity and she will require assistance in the future to complete such chores.

LOSS OF INCOME

12. The Plaintiff has sustained a loss of income and will continue to sustain a loss of income, a loss of competitive advantage in the employment field, a loss of income earning potential and a diminution of income earning capacity.

OTHER PECUNIARY DAMAGES

13. As a result of the negligence of the Defendant, the Plaintiff has suffered other pecuniary damages up to the present and will continue to suffer pecuniary damages in the future, the full particulars of which are not known at this time.

APPLICABLE STATUTES

14. The Plaintiff pleads and relies upon the provisions of the *Highway Traffic Act*, R.S.O. 1990, Chapter H.8, as amended, and the *Insurance Act*, R.S.O. 1990, Chapter 1.8, as amended.

~

PLACE OF TRIAL

15. The Plaintiff proposes that this action be tried at the City of Brampton, in the Regional Municipality of Peel.

June 18, 2021

McLEISH ORLANDO LLP

Lawyers
151 Yonge Street
Suite 1800
Toronto, Ontario
M5C 2W7

DALE V. ORLANDO

L.S.O. No.: A038379B

LINDSAY CHARLES

L.S.O. No.: 65827A

Tel.: 416-366-3311

Fax: 416-366-3330

Lawyers for the Plaintiff

ANNE MARIE AL-BORNO

- and -

MAJID ALWAHAH

Plaintiff

Defendant

Court File No.:

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at BRAMPTON

STATEMENT OF CLAIM

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